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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/926,513	01/02/2002	Andreas Krell	P21519	6687

7055 7590 02/20/2004

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RESTON, VA 20191

EXAMINER

MARCHESCHI, MICHAEL A

ART UNIT	PAPER NUMBER
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1755

DATE MAILED: 02/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/926,513

Applicant(s)

KRELL ET AL.

Examiner

Michael A Marcheschi

Art Unit

1755

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 January 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): THE REJECTION OF CLAIMS 34,35 AND 65-68 OVER EP 554,908.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

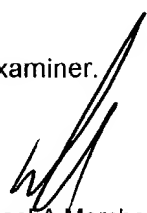
Claim(s) allowed: 23-33,36-45,47,48 and 51-64.

Claim(s) objected to: _____

Claim(s) rejected: 34,35,46,49,50 and 65-68.

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____


Michael A Marcheschi
Primary Examiner
Art Unit: 1755

Continuation of 5. does NOT place the application in condition for allowance because: APPLICANTS ARGUE THAT EP '208 RELATES TO THE SIZE OF THE GRAINS AND NOT THE POWDERS THEMSELVES. THIS IS NOT PERSUASIVE BECAUSE APPLICANTS HAVE NOT SHOWN ANY CONVINCING EVIDENCE (NUMERICAL EVIDENCE) THAT THE FINE OR SMALL SIZE POWDERS OF THE REFERENCE ARE NOT WITHIN THE SCOPE OF THE CLAIMED SIZE. THE REFERENCE CLEARLY TEACHES THAT THE POWDERS ARE FINE AND SMALL SIZED (see page 8, line 41, page 10, line 4, etc.) AND IT IS THE EXAMINERS POSITION THAT THE BROAD RECITATION OF FINE OR SMALL IS WITHIN THE SCOPE OF THE CLAIMED SIZE ABSENT CLEAR EVIDENCE TO THE CONTRARY. APPLICANTS ALSO ARGUE THE 98% ALUMINA LIMITATION (DEFINITION ACCORDING TO THE SPECIFICATION). THE EXAMINER FAILS TO UNDERSTAND THIS ARGUMENT BECAUSE THE REFERENCE MATERIAL IS CLEARLY AT LEAST 98% ALUMINA. APPLICANTS ALSO APPEAR TO BE ARGUING THAT THIS REFERENCE USES A COMPLEX. THE EXAMINER ACKNOWLEDGES THIS AND HAS ADDRESSED THIS ARGUMENT IN THE PREVIOUS OFFICE ACTION (ARGUMENT WAS APPLIED BEFORE). WITH RESPECT TO CLAIMS 49 AND 50, APPLICANTS PROVIDE NO SUBSTANTIAL ARGUMENTS WITH RESPECT TO THESE CLAIM AND THEREFORE NO COMMENT IS DEEMED NECESSARY. APPLICANTS ARE REMINDED THAT PRODUCT BY PROCESS CLAIMS DOES NOT DISTINGUISH OVER THE ART. FINALLY, APPLICANTS ARGUMENTS WITH RESPECT TO THE KATOH REFERENCE ARE NOT PERSUASIVE. AS CAN BE CLEARLY SEEN IN TABLE 2 OF THIS REFERENCE, PORE VOLUMES AND PORE DIAMETERS ARE DEFINED WHICH ARE CLEARLY WITHIN THE SCOPE OF INSTANT CLAIM 46. THE EXAMINER ACKNOWLEDGES THAT THIS TABLE RELATES TO THE EXAMPLES WHICH ARE CALCINED AT A TEMPERATURE OF 600 C. HOWEVER, THE REFERENCE CLEARLY TEACHES IN COLUMN 4, LINE 55 THAT HIGHER TEMPERATURES CAN BE USED (I.E. 650 C). IT IS THEREFORE THE EXAMINERS POSITION THAT A CALCINATION TEMPERATURE OF 650 C (TEMPERATURE WITHIN THE SCOPE OF INSTANT CLAIM 46) WILL NOT DRASTICALLY CHANGE THE PORE VOLUME AND SIZES AS DEFINED IN THE TABLE, THUS STILL READING ON THE INSTANT CLAIM ABSENT EVIDENCE TO THE CONTRARY..